



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 22.09.2025***
Judgment pronounced on: 23.12.2025

+ EFA(OS) 7/2023, CM APPLs. 25141/2023 & 21223/2024

MEENA RANI GUPTA AND ANR.Appellants

Through: Mr. Ashok Gurnani, Advocate.

versus

VEENA MAHAJAN AND ORS.Respondents

Through: Ms. Geeta Luthra, Senior Advocate with Ms. Shivani Luthra Lohiya, Ms. Ishita Soni, Mr. Rishabh Dahiya and Ms. Ananya Mohanty, Advocates for R-1.

Mr. Ravi Bassi, Mr. Sanyam Malik and Mr. Nitin Kumar, Advocates for R-3 and LR of R-4.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. This **Execution First Appeal**¹ has been preferred under Order XXI Rule 58 of the **Code of Civil Procedure, 1908**², read with

¹ EFA

² CPC



Section 10 of the Delhi High Court Act, 1966, assailing the **Judgment dated 02.02.2023³** passed by the learned **Single Judge of this Court⁴** in EX. APPL.(OS) No. 682/2012 in EX.P. 282/2012.

2. By the Impugned Judgment, the learned Executing Court dismissed all objections raised by the Appellants, including allegations of fraud and collusion, as well as those founded on Sections 52 and 53A of the **Transfer of Property Act, 1882⁵**, and Sections 19 and 22 of the **Specific Relief Act, 1963⁶**.

3. Pithily put, the present Appeal arises from the proceedings emanating out of a decree dated 29.04.1998, passed in a suit for specific performance of an Agreement to Sell dated 14.02.1986, instituted by **Ms. Veena Mahajan⁷** against **Mr. V.N. Verma⁸**. Pursuant to the said decree, Respondent No. 1 herein/DH, filed execution proceedings in the year 2012, wherein the present Appellants filed their objections. The said objections were dismissed by the learned Executing Court *vide* the Impugned Judgment, giving rise to the present Appeal.

4. At the outset, it is necessary to note that during the pendency of the present Appeal, Respondent No. 4 passed away and is now represented by his legal representatives.

5. For the sake of clarity, uniformity and consistency, the parties in the present Appeal shall hereinafter be referred to in accordance with their respective ranks in the Execution Petition.

³ Impugned Judgment

⁴ Executing Court

⁵ TOPA

⁶ SRA

⁷ Decree Holder/DH

⁸ Judgment Debtor or JD



2025:DH:11771-CB

**BRIEF FACTS:**

6. The suit property, bearing **Plot No. 40, ad-measuring 360 sq. yds., situated at Chitra Vihar, Village Khureji Khas, Shahdara, Delhi-110092⁹**, was originally owned by the JD. The JD had executed an Agreement to Sell dated 14.02.1986 in favour of the DH.

7. However, prior to the institution of the suit by the DH, the JD had, on 21.01.1988, entered into another transaction in respect of the same suit property, executing various documents including Agreement to Sell, Affidavit/Undertaking and Registered Will in favour of Ms. Kamlesh Gupta (*Predecessor-in-interest of the Objectors*), as well as General and Special Powers of Attorney in favour of her husband, Mr. Ganga Prasad Gupta. In part performance of the said Agreement to Sell, they were also placed in physical possession of the suit property.

8. The DH instituted Civil Suit No. 553/1988 on 07.03.1988 before this Court, seeking specific performance of the Agreement to Sell dated 14.02.1986 and possession of the suit property, or, in the alternative, refund of the part-payment along with damages. By an interim order dated 14.03.1988, the Court restrained the JD from alienating, transferring, or creating any third-party rights in respect of the suit property.

9. Despite the interim Order in favour of the DH, Mrs. Kamlesh Gupta (*Predecessor-in-interest of the Objectors*) sold the property to **Ms. Meena Rani Gupta and Ms. Nalini Gupta¹⁰** vide Agreement to Sell, Registered Will, General & Special Power of Attorney and

⁹ Suit Property

¹⁰ Objectors



Receipt etc., all executed on 26.11.1990, and delivered actual possession to them.

10. The said suit instituted by the DH was finally decided by the Judgment and Decree dated 29.04.1998, whereby a learned Single Judge of this Court directed the JD to execute the necessary conveyance deed in favour of the DH upon the latter depositing a sum of Rs. 70,000/-, and in the event of the JD's failure to do so, authorized the Court's officer to execute and register the requisite sale documents on the JD's behalf, while also awarding costs in favour of the DH.

11. The JD's Appeal against the judgement decree, registered as RFA(OS) 86/1998, was dismissed on 18.01.2012 by a Division Bench of this Court. The Objectors' application under Order I Rule 10 of the CPC for impleadment in the said Appeal was also dismissed, holding that they were strangers to the suit.

12. The Objectors' further independent Appeal, registered as RFA(OS) 125/1998, was also dismissed vide Order dated 02.01.2012; however, while doing so, the Division Bench granted liberty to the Objectors to raise all available defences at the stage of execution proceedings.

13. The aggrieved parties thereafter approached the Hon'ble Supreme Court, but their challenges were unsuccessful.

14. Meanwhile, the Objectors instituted Civil Suit No. CS(OS) 779/2001 before this Court, seeking specific performance of the Agreement to Sell dated 26.11.1990 executed by Ms. Kamlesh Gupta (*Predecessor-in-interest of the Objectors*) in their favor. The said suit was subsequently transferred, in the year 2016, to the Court of the



learned District and Sessions Judge (East District), Karkardooma Courts, Delhi, for further adjudication, which is still pending there.

15. In 2012, the DH instituted Execution Petition No. 282/2012 seeking enforcement of the decree dated 29.04.1998. In the said proceedings, the Objectors filed an objection application, being EX. APPL. (OS) No. 682/2012, under Sections 47 and 151 of the CPC, asserting their lawful possession of the suit property on the basis of part performance under Section 53A of the TOPA. They further raised several other grounds and claimed protection as *bona fide* purchasers without notice.

16. The Objectors in their Objection Application contended that they were *bona fide* purchasers for value without notice of the prior Agreement to Sell executed between the DH and the JD and were wholly unaware of the pendency of any litigation relating to the suit property. It was urged that the JD had already parted with physical possession of the property in favour of Ms. Kamlesh Gupta (*Predecessor-in-interest of the Objectors*) prior to the institution of the suit by the DH, and therefore, the doctrine of *lis pendens* embodied under Section 52 of the TOPA was inapplicable to their case.

17. The Objectors further submitted that their possession was lawful and deserved protection under Section 53A of the TOPA as transferees in part-performance of the Agreement to Sell dated 26.11.1990, independent of and unaffected by any claim raised by the DH. It was further contended that the decree dated 29.04.1998 stood vitiated by fraud and collusion between the DH and the JD, inasmuch as the existence of the prior Agreement to Sell in favour of Ms. Kamlesh Gupta (*Predecessor-in-interest of the Objectors*) had been



deliberately concealed and she was not impleaded as a necessary party to the suit.

18. In reply, the DH urged that the Objectors had already exhausted all available remedies by pursuing multiple rounds of litigation and that the present objection is frivolous, vexatious, and intended solely to delay the execution of the decree. It was further contended by the DH that the equitable protection under Section 53A of the TOPA, is available only as a defence against the transferor and not against third parties claiming through the decree, placing reliance upon the decision of the Hon'ble Supreme Court in *Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra*¹¹, to contend that the Objectors could not seek protection against the DH, who was not their transferor in law.

19. After hearing the parties and carefully considering the material placed on record, the learned Executing Court undertook a detailed examination of the issues raised in the matter and rendered findings thereon by the Impugned Judgment. A brief overview of the same is set out below:

S. No.	Issues examined by the learned Executing Court	Decision / Finding rendered by the learned Executing Court
I	Whether the doctrine of <i>lis pendens</i> under Section 52, TOPA applies to the transactions by which the Objectors derive title and whether the Objectors are transferees <i>pendente</i>	<u>Answered in the affirmative (against the Objectors).</u> The Court essentially held that the transactions by which the Objectors claim title were effected during the pendency of the suit; therefore, they are transferees <i>pendente lite</i> and their rights are subservient to the DH. The

¹¹ (2004) 8 SCC 614



2025:DHJ:11771-CB



	<i>lite</i> , whose rights are subordinate to the DH?	doctrine of <i>lis pendens</i> applies in this case and the Objectors who received the property during <i>lis</i> are bound by the decree.
II	Whether the Objectors are entitled to claim protection of their possession under Section 53A of the TOPA?	<u>Answered in the negative (against the Objectors).</u> The Court held that Section 53A affords protection only as a shield against the transferor. Further, Ms. Kamlesh Gupta (<i>Predecessor-in-interest of the Objectors</i>) had only an Agreement to Sell and no sale deed, and therefore, she could not transfer a better title to the Objectors.
III	Whether the Decree dated 29.04.1998 is vitiated by <i>fraud or collusion</i> between the Decree-Holder and the Judgment-Debtor so as to render it inexecutable?	<u>Answered in the negative (against the Objectors).</u> The Court held that the allegation of fraud/collusion is bald and unsupported by material. Further, the earlier Agreement dated 14.02.1986 in favour of the DH predates later Agreements, and also, the JD contested the Appeal on merit before the Division Bench of this Court.
IV	Whether the plea that the Agreement to Sell dated 14.02.1986 had been cancelled prior to the JD's subsequent dealings (and hence the decree could not have been passed) is sustainable?	<u>Answered in the negative (against the Objectors).</u> The Court held that the trial Court and the Appellate Court, in the Judgments in the suit as well as in the appeal, considered and rejected any claim of cancellation. Thus, the decree dated 29.04.1998 has attained finality and the cancellation plea is without merit and not open to be re-agitated in execution.



V	Whether the Objectors can successfully invoke the plea of <i>bona fide</i> purchase without notice, so as to defeat the rights of the Decree Holder under Section 19 of the SRA?	<u>Answered in the negative (against the Objectors).</u> The Court held that Section 52 of the TOPA and Section 19 of the SRA render the plea of <i>bona fide</i> purchase immaterial during <i>lis pendens</i> .
VI	Whether the DH is entitled to seek delivery of possession in execution of a decree for specific performance, even though the decree does not expressly grant possession, when such relief for possession had been specifically prayed for in the suit?	<u>Answered in the affirmative (against the Objectors).</u> The Court held that possession is incidental to a decree for specific performance in appropriate cases. Consistent judicial precedents interpreting Section 22 of the SRA, establish that possession may be granted at the stage of execution even if not expressly provided in the decree; therefore, the DH is entitled to possession.

20. Being aggrieved with these findings, the Objectors have filed the present Appeal before us.

CONTENTIONS OF THE OBJECTORS:

21. Learned Counsel for the Objectors would submit that the learned Executing Court failed to properly appreciate both the facts and the applicable law, and would further contend that the Court relied upon judicial precedents which, according to them, are wholly inapplicable to the facts and circumstances of the present case.

22. Learned Counsel for the Objectors would contend that they are in lawful and continuous physical possession of the suit property by virtue of part performance of the Agreement to Sell dated 26.11.1990,



executed in their favour by Ms. Kamlesh Gupta (*Predecessor-in-interest of the Objectors*), and that, by reason thereof, they are entitled to the protection under Section 53A of the TOPA.

23. Learned Counsel for the Objectors would further contend that the doctrine of *lis pendens* under Section 52 of the TOPA is inapplicable to them, as they derive their title and possession not directly from the JD but from Ms. Kamlesh Gupta (*Predecessor-in-interest of the Objectors*), who was not a party to the original suit in which the decree dated 29.04.1998 was passed, and that since she had acquired her title and interest in the suit property prior to the institution of the suit by the DH, the doctrine of *lis pendens* cannot apply to the facts of their case.

24. Learned Counsel for the Objectors would submit that the decree dated 29.04.1998 was obtained by fraud and collusion between the DH and the JD, for the reason that both were well aware of the Agreement to Sell dated 21.01.1998 executed in favour of Ms. Kamlesh Gupta (*Predecessor-in-interest of the Objectors*), yet deliberately chose not to implead her as a necessary party to the proceedings.

25. Learned Counsel for the Objectors would further submit that the Objectors are *bona fide* purchasers for value without notice of the prior Agreement to Sell executed between the DH and the JD, and that their possession and interest, being lawful and genuine, deserve protection under the exception contained in Section 19(b) of the SRA.

26. Learned Counsel for the Objectors would also submit that the DH is not entitled to seek possession in execution, since the JD was not in actual possession of the suit property at the time of filing of the



suit, and as the decree did not specifically grant the relief of possession to the DH despite express prayers to that effect, the present decree, in their submission, is unsustainable and contrary to Section 22 of the SRA.

27. Learned Counsel for the Objectors would, in substance, reiterate the submissions made before the learned Executing Court, and would also endeavour to distinguish the precedents relied upon by the learned Executing Court in the Impugned Judgment, asserting that the said authorities have no bearing on the facts of their case.

CONTENTIONS OF DECREE HOLDER/DH:

28. Learned Senior Counsel for the DH would make submissions in support of the Impugned Judgment and would justify the reasoning recorded by the learned Executing Court, asserting that the findings are based on sound appreciation of facts and law.

29. Learned Senior Counsel for the DH would contend that the Objectors have already availed and exhausted all legal remedies available to them, and would argue that their present objections are frivolous, repetitive, and intended solely to delay and frustrate the execution proceedings.

30. Learned Senior Counsel for the DH would further contend that the protection under Section 53A of the TOPA is an equitable defence available only against the transferor and not against third parties, and that therefore, the Objectors, if at all entitled to any such benefit, could claim it only against their transferor, Ms. Kamlesh Gupta, and not against the DH.

31. Learned Senior Counsel for the DH would submit that the transaction between Ms. Kamlesh Gupta (*Predecessor-in-interest of*



2025-DHC-11771-CB



the Objectors) and the Objectors themselves is hit by the doctrine of *lis pendens* under Section 52 of the TOPA, since it was executed during the pendency of the suit proceedings, and would therefore argue that the Objectors are bound by the decree and cannot claim any independent or superior right to that of the JD.

32. Learned Senior Counsel for the DH would further submit that the allegations of fraud and collusion are unfounded and unsubstantiated, and would point out that the JD had already challenged the decree before this Court by way of an Appeal which was dismissed on merits, and therefore, upon due consideration of the facts and circumstances, the learned Executing Court rightly rejected the Objectors' contention alleging fraud and collusion.

33. Learned Senior Counsel for the DH would also refute the contention of the Objectors that they are *bona fide* purchasers for value without notice, and would contend that their claim to such status is untenable in law and contrary to the record.

34. Regarding possession, learned Senior Counsel for the DH would contend that the relief of possession is inherent in a decree for specific performance of an agreement to sell between the Judgment Debtor and the DH, and would therefore argue that the DH is entitled to obtain possession in execution even though the decree does not specifically grant such relief.

ANALYSIS:

35. We have heard the learned counsel appearing for the parties and carefully perused the pleadings as well as the documents placed before us.



36. At this stage, we deem it appropriate to express our dismay towards the parties, as upon a careful perusal of the Impugned Judgment, we noticed several significant and grave errors therein, contrary to the record. These discrepancies have caused considerable difficulty in examining the voluminous record of the case and have rendered our task unduly arduous. It is indeed unfortunate that the parties took no steps to rectify such errors in the interest of preserving the purity and accuracy of the judicial record, despite the enabling provision contained in Section 152 of the CPC.

37. Nevertheless, since the core findings and reasoning of the Impugned Judgment remain discernible, and the issues in controversy largely revolve around the application of legal principles to the broader facts and circumstances of the case, we do not consider it necessary to dwell upon or engage in a minute examination of these clerical or factual inaccuracies.

38. Now turning to the merit, since multiple objections were raised by the Objectors before the learned Executing Court, and the very same objections have been reiterated before us, we deem it appropriate to examine their contentions in the same sequence and under the corresponding heads as adopted by the learned Executing Court in the Impugned Judgment.

NON-APPLICABILITY OF THE DOCTRINE OF *LIS PENDENS* EMBODIED IN SECTION 52 OF THE TOPA

39. The learned Executing Court, after considering the principles underlying the doctrine of *lis pendens* and examining various judicial precedents, concluded that even in the facts of the present case, the said doctrine would be applicable. Accordingly, the learned Court



2025-DHC-11771-CB



held that the Objectors' Agreement to Sell etc. dated 26.11.1990 would be hit by the principles of *lis pendens* embodied in Section 52 of the TOPA. The relevant portion of the Impugned Judgment, wherein the learned Executing Court examined and recorded its findings on this aspect, is extracted below:

“Doctrine of *Lis Pendis* under Section 52 of the Transfer of Property Act, 1882:

26. The Objectors have claimed that the doctrine of *lis pendis* is not applicable to them since they derive their title, not from the JD, but from Ms. Kamlesh Gupta, who was not a party to the suit.

27. Significantly, the Objectors' claim to title is based on the transaction entered into during the pendency of the Execution of the decree made in the Suit i.e., they are the transferee pendent lite deriving their rights from the JD even though through Kamlesh Gupta.

28. The Rule of *lis pendis* based on the principles of justice, equity and good conscious, which is enshrined in Section 52 of the TPA, 1882. It reads as under:-

“Section 52 –Transfer of property pending suit relating thereto.— During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose. Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”



2025-DHC-11771-CB



29. In Ballamy vs. Sabine, (1857) 1 DeG&J 566, Lord Cranworth, L.C. about one and a half centuries back, explained that this doctrine is based on the necessity of putting an end to litigation which otherwise would continue ad infinitum. The relevant paragraph reads thus:

“...where a litigation is pending between a plaintiff and a defendant as to the right to a particular estate, the necessities of mankind require that the decision of the Court in the suit shall be binding not only on the litigating parties, but also on those who derive title under them by way of alienations made during the pendency of the suit, whether such alienees had or had not notice of the pending proceedings. If this is not so, there could be no certainty that the litigation would ever come to an end.”

30. In Amit Kumar Shaw vs. Farida Khatoon (2005) 11 SCC 403, the Hon’ble Apex Court observed that the doctrine of lis pendens, therefore, applies only when the lis is pending before a Court. It enumerated the following elements that should be present in order to constitute lis pendens:

- “1. *There must be a suit or proceeding pending in a court of competent jurisdiction.*
2. *The suit or proceeding must not be collusive.*
3. *The litigation must be one in which the right to immovable property is directly and specifically in question.*
4. *There must be a transfer of or otherwise a dealing with the property in dispute by any party to the litigation.*
5. *Such transfer must affect the rights of the other party that may ultimately accrue under the terms of the decree or order.*”

31. In Smt. Ram Peary vs. Gauri and Ors., AIR 1978 All 318, the Full Bench of Allahabad High Court explained that this rule is based on the principles of public policy wherein a purchaser who purchases during the pendency of a suit need not be impleaded as a party and shall have subservient rights in comparison to the litigating parties. It expounded the doctrine of lis pendens as follows:

“...Ordinarily, it is true that the judgment of a court binds only the parties and their privies in representations or estate. But he who purchases during the pendency of an action, is held bound by the judgement that may be against the person from whom he derives title. The litigating parties are exempted from taking any notice of the title so acquired; and such purchaser need not be made a party to the action. Where there is a real and fair purchase without



2025-DHC-11771-CB



any notice, the rule may operate very hardly. But it is a rule founded upon a great public policy; for otherwise, alienations made during an action might defeat its whole purpose, and there would be no end to litigation. And hence arises the maxim pendente lite, nihil innovetur; the effect of which is not to annul the conveyance, but only to render it subservient to the rights of the parties in the litigation. As to the rights of these parties, the conveyance is treated as if it never had any existence; and it does not vary them.”

32. The Hon’ble Apex Court in the case of Usha Sinha vs Dina Ram (2008) SCC 144 explained the rights of the transferee pendente lite by observing that a transferee from a Judgment Debtor is presumed to be aware of the proceedings before the Court of Law. Thus, he should be careful before he purchases the property which is the subject matter of litigation. Rule 102 of Order XXI of CPC, 1908 thus takes into account the ground reality and refuses to extend a helping hand to purchasers of a property in respect of which the litigation is pending. It recognizes the doctrine lis pendens contained in Section 52 of the TPA, 1882. Similar observations were made by the Apex Court in Sarvinder Singh vs. Dalip Singh (1996) 5 SCC 539.

33. In Sanjay Verma vs. Manik Roy and Ors. (2006) 13 SCC 608, in accordance with equity, good conscience and justice, applying the principles of public policy as contained in Section 52 of TPA, 1882, it was concluded that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail and no question of good faith or bona fide arises. A Transferee pendente lite is bound by the decree just as if he was a party to the Suit. The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in a Suit, unless the property was alienated with the permission of the court. The view expressed in Ballamy (supra) were thus endorsed.

34. Similarly, in M.S. Mansoor Deen and Ors. vs. Fathimuthu Bevy & Ors. (2009) 4 CTC 489, the Madras High Court observed that the transferees pendente lite from the JD having no independent right in the teeth of Section 52 of the TPA, 1882, cannot resist the execution since under the doctrine of lis pendens a Decree passed in a suit during the pendency of which a transfer is effected, makes the decree binding on the transferee.

35. In Silverline Forum Private Limited vs. Rajiv Trust (1998) 3 SCC 723, while considering the resistance caused by the transferee pendente lite, the Hon’ble Apex Court held that the scope of the



2025-DHC-11771-CB



adjudication is confined to the question of whether he was a transferee during the pendency of the suit in which the decree was passed. If such finding is in affirmative, the executing court must hold that he has no right to resist or obstruct the proceedings and such person cannot seek protection from the executing Court. The exclusion of such a third party Transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of TPA, 1882. For example, if the obstructer admits that he is the Transferee pendente lite, it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third-party who questions the validity of a transfer made by a DH to an assignee, cannot claim that the question regarding its validity should be decided during the executing proceedings.

36. Hence, the question for determination is whether the title of the Objectors is superior to that of the Decree Holder and whether they are entitled to remain in possession on the strength of the Agreement to Sell dated 26th November, 1990 executed in their favour by Ms. Kamlesh Gupta.

37. The Agreement to Sell was executed by the JD in favour of the DH on 14th February, 1986. Subsequently, he entered into another Agreement to Sell with Ms. Kamlesh Gupta on 21.01.1988, which is prior to the institution of this Suit. Once the Agreement to Sell had already been executed in favour of the DH on 14th February, 1986, any subsequent Agreement to Sell would obviously be subject to the earlier interest already created by way of the Agreement to Sell dated 14th February, 1986.

38. Ms. Kamlesh Gupta could have sought execution of Agreement to Sell only if she could establish that her title was superior to that of the DH. But in the absence of any Sale Deed in her favour, she could not have asserted any ownership rights. Thus, merely on the basis of an Agreement to Sell, she could not have transferred the ownership rights which she herself did not possess.

39. The sole claim of the Objectors' rests on the Agreement to Sell dated 26th November, 1990 executed by Ms. Kamlesh Gupta during the pendency of the present Suit. From the admitted facts, it is evident that Ms. Kamlesh Gupta merely had an Agreement to Sell and other documents in her favour, but the big question is whether the mere execution of an Agreement to Sell amounted to sale of the suit property as defined under Section 54 of TPA, 1882 or whether it was merely an Agreement subject to the rights of the owner i.e., the JD.

40. Ms. Kamlesh Gupta and her husband Gagan Parshad are the predecessor-in-interest through whom the Objectors are claiming a right and title which cannot be better than that of the predecessor-



2025-DHC-11771-CB



in-interest i.e., Ms. Kamlesh Gupta. Rather, the rights of Ms. Kamlesh are subservient to those of DH as held in the case of Ram Peary (supra). In addition to this, the JD, having entered into Agreement to Sell dated 14th February, 1986 with the DH, was enjoined by law from entering into any further sale transaction with third party. The facts in hand get squarely answered by the decision of the Apex Court in Sanjeev Lal (supra).

41. The DH has already got a Decree dated 29th April, 1988 in her favour and has been held to be entitled to specific performance on the basis of Agreement to Sell dated 14th February, 1986 which is prior to the documents dated 21st January, 1988 executed in favour of Kamlesh through whom the Objectors are claiming a title.

42. Though the Agreement to Sell between the JD and Kamlesh Gupta was executed on 21st January, 1988 i.e., prior to the institution of the Suit by the DH, the Agreement to Sell dated 26th November, 1990 between Kamlesh Gupta and the Objectors was executed subsequent to the Decree for Specific Performance dated 29th April, 1988 in favour of DH. Thus, Kamlesh Gupta and Ganga Prasad Gupta, though not a party to the Suit, were made party to the Execution Petition No 282/2012 for the execution of the Decree in CS (OS) 553/1988.

43. The explanation to Section 52 of TPA, 1882 provides that lis pendens subsists until the decree is discharged. With the execution of the decree yet to be effected, Suit No 553/1998 is still lis pendence for the purposes for section 52 of the TPA, 1882 making the transaction between Kamlesh Gupta and the Objectors fall under the scope of Section 52 of TPA, 1882. As observed in Sanjay Verma (supra), a Transferee pendente lite is bound by the decree, thus making the appellants, who were transferees from Kamlesh Gupta, bound by the Decree.

44. In Surjit Singh vs. Harbans Singh (1995) 6 SCC 50, the Hon'ble Apex Court answered the question of whether a person to whom the suit property is alienated after passing of the preliminary decree by the trial court which had restrained the parties from alienating or otherwise transferring the suit property, has the right to be impleaded as party, in the negative. While rejecting the impleadment of the assignees, the Hon'ble Apex Court had also observed that if alienation/assignment is allowed in defiance of the restraint order, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained but is presumed to exist till the Court orders otherwise. The court in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes.



2025-DHC-11771-CB



45. In Vidur Impex and Traders Private Limited vs. Tosh Apartments Private Limited and Others (2012) 8 SCC 384, while making a reference to Surjit Singh (supra), it was held that where an Agreement to Sell was made and even the Sale Deed pursuant thereto was executed by respondent No. 2 in favour of the appellants in a clandestine manner and in violation of the injunction granted by the High Court, it cannot be said that any valid title or interest has been acquired by the appellants in the suit property by virtue of such a Sale Deed.

46. Thus, the transaction inter se between Ms. Kamlesh Gupta and the applicant dated 26.11.1990 is covered by doctrine of *lis pendens* as provided in Section 52 of the Transfer of Property Act, 1882 and the rights acquired, if any, by the applicant was subject to the outcome of the pending suit. This suit has been decreed in favour of the DH, Veena Mahajan and her rights have crystallized into a superior title and Ms. Kamlesh Gupta cannot claim any right title merely on the basis of an Agreement to Sell. Ms. Kamlesh Gupta could not have transferred any title better than what she had in favour of the Objectors. Thus, even if she executed an Agreement to Sell, Will, Special Power of Attorney, General Power of Attorney and Receipt all dated 26th November, 1990 in favour of the Objectors, their rights were not only hit by the doctrine of *lis pendens*, but also were subject to the decree which has been given in favour of the DH Veena Mahajan.

47. The Objectors do not have any valid independent right title in the property and thus, their objections are without merit and have no right to seek protection of their possession.”

40. In the present case, it is pertinent to note that the Agreement to Sell executed in favour of the DH by the JD was prior in point of time i.e., of 14.02.1986. Subsequently, the JD executed another Agreement to Sell etc. dated 21.01.1988, in favour of Ms. Kamlesh Gupta (*Predecessor-in-interest of the Objectors*) and also delivered possession of the suit property to her in part performance thereof. Thereafter, in 1990, Ms. Kamlesh Gupta, having acquired possession and interest in the suit property, executed an Agreement to Sell in favour of the present Objectors and transferred possession accordingly. By that stage, i.e., on 26.11.1990, although the suit



instituted by the DH against the JD was pending, and an interim order had been passed restraining the JD from alienating or otherwise dealing with the suit property, it is significant that such order came into effect only after the transfer and Agreement to sale etc. along with possession in favour of Ms. Kamlesh Gupta (*Predecessor-in-interest of the Objectors*) had already taken place.

41. It is a matter of record that Ms. Kamlesh Gupta (*Predecessor-in-interest of the Objectors*) was not impleaded as a party to the said suit, and her independent transaction with the JD predated its institution. Consequently, the operation of Section 52 of the TOPA, which embodies the doctrine of *lis pendens*, would not be attracted to her transaction. The said provision prohibits the transfer or alienation of property “During the pendency in any Court of any suit or proceeding” only “by a party to the suit or proceeding”, subject to the decision of the pending *lis*. However, the Objectors derive their rights from Kamlesh Gupta, in whose favour the transfer documents were executed on 21.01.1988, which predates the suit filed by the DH.

42. In view of the above, the finding of the learned Executing Court regarding the applicability of the doctrine of *lis pendens* in the present case is set aside.

PROTECTION OF POSSESSION UNDER SECTION 53A OF THE TOPA

43. With respect to the contention advanced by the Objectors seeking protection under Section 53A of the TOPA, the learned Executing Court undertook a detailed examination of the said plea and rendered the following findings:



2025-DHC-11771-CB



“Protection of possession under Section 53A of the Transfer of Property Act, 1882:

48. The Objectors may have been put in possession pursuant to the Agreement to Sell dated 26.11.1990 by Ms. Kamlesh Gupta, but the other aspect is whether they can seek any protection under Section 53A of TPA, 1882.

49. The essential conditions which are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53A of the TPA, 1882 have been explained by the Apex Court in Shrimant Shamrao Suryavanshi vs. Pralhad Bhairoba Suryavanshi (2002) 3 SCC 676 which are:

- “1. There must be a contract to transfer for consideration of any immovable property;
2. The contract must be in writing, signed by the transferor, or by someone on his behalf;
3. The writing must be in such words from which the terms necessary to construe the transfer can be ascertained;
4. The transferee must in part-performance of the contract take possession of the property, or of any part thereof;
5. The transferee must have done some act in furtherance of the contract;
6. The transferee must have performed or be willing to perform his part of the contract.”

50. If these conditions are fulfilled, then the equitable doctrine of part-performance provided under Section 53A of TPA, 1882 comes into play in favour of the proposed Transferee who can protect his possession against the proposed transferor, even though the Registered Deed conveying the title is not executed by the proposed Transferor. The protection provided under Section 53A of TPA, 1882 is only against the Transferor. It disentitles the transferor from disturbing the possession of the proposed Transferee who is put in possession in pursuance of such an Agreement to Sell.

51. In State of U.P. vs. District Judge & Ors. 1997 (1) SCC 496, it was observed that the protection is available under the TPA, 1882 as a shield only against the transferor and the proposed vendor who is disentitled from disturbing the possession of the proposed Transferees who are put in possession pursuant to such Agreement. But this has nothing to do with the ownership of the proposed Transferor who remains the full owner of the said land till it is legally conveyed by Sale Deed to the proposed Transferees. It was further observed that Section 53A of TPA, 1882 is merely to protect the possession of the proposed vendee and may entitle him to protection of the possession which they have acquired pursuant



2025-DHC:11771-CB



to an Agreement to Sell but such a right cannot be pressed against a third party.

52. The pertinent question which arises in the facts of this case is whether the doctrine of part-performance can be availed by the Objectors with whom the judgement debtor has never entered into an Agreement of Sale. In Rambhau Namdeo Gajre vs. Narayan Bapuji Dhotra (2004)8 SCC 614, similar facts as in hand came up for consideration. The owner executed an Agreement to Sell with one Pishorilal who also took possession in part-performance thereof. Sale deed had never been executed. Within a period of two and a half months, the Pishorilal executed a similar agreement of sale in favour of the appellant and put them in possession of the suit land. Pishorilal who merely had an Agreement to Sell in his favour, had no ownership right and thus was held to have no right to enter into an Agreement to Sell with the appellants.

53. In the present facts as well the owner had executed an Agreement to Sell in favour of one Ms. Kamlesh Gupta who in turn executed another Agreement to Sell in favour of the present Objectors vide Agreement to Sell dated 26th November, 1990, and also put them in possession. Ms. Kamlesh Gupta being merely having an Agreement to Sell was not the owner and could not have possibly entered into the Agreement to Sell in respect of the suit property with the present Objectors.

54. In Rambhau Namdeo Gajre (supra), it was observed that an Agreement to Sell does not create any interest of the proposed vendee in the suit property. As per Section 54 of TPA, 1882 the title in immovable property valued at more than Rs. 100 can be conveyed only by executing a registered sale deed. This Section specifically provides that a contract for sale of immovable property is a contract evidencing the fact that the sale of such property shall take place on the terms settled between the parties but does not by itself create any interest in or charge on such property. Unless a registered document of sale is executed pursuant to the Agreement to Sell in favour of the proposed transferee, the title of the suit land continues to vest in the original owner and the property remains in his ownership. The doctrine of part performance can be availed by the proposed transferee against the Transferor or any person claiming under him and not against the third party with whom he does not have any privity of contract.

55. The Scope of Agreement to Sell and the right, title and interest which are created under an Agreement to Sell was explained by the Apex Court in Suraj lamp and Industries private limited vs. State of Haryana (2012) 1 SCC 656. It was held that the Agreement to Sell coupled with other documents namely Special Power of Attorney, General Power of Attorney are not transactions of transfer or sale and cannot be treated as a complete sale or



2025-DHC-11771-CB



conveyance. They may continue to be treated as existing Agreement to Sell and nothing prevents the affected parties from getting registered deeds of conveyance to complete their title. These documents may even be used to obtain specific performance or to defend possession under Section 53A of the TPA, 1882 or may also be used to apply for regularization of allotments/leases by development authorities. However, the Agreement to Sell independently continues to be only an agreement and does not create any valid transfer of ownership in the suit property.

56. In *Rekha Nankani vs. Kulwant Singh Sachdeva* and Ors. (2009) 107 DRJ 282, this Court observed that if a property was bound by the Agreement of the owner/vendor, then merely because the vendor had transferred the property, the transferee shall not acquire rights better than that of the vendor and shall be subject to the liability of the vendor. Similar observations were made by the High Court of Allahabad in *Smt. Ram Peary* (supra).

57. Therefore, in view of the law as laid down in the afore-discussed case law, it may be concluded that the Objectors are not entitled to any protection of their possession under Section 53-A of TPA, 1882.”

44. In the present case, it is a matter of fact that the transaction involving the execution of documents, including the Agreement to Sell and other related instruments, as well as the delivery of possession of the suit property by the JD in favour of Ms. Kamlesh Gupta (*Predecessor-in-interest of the Objectors*) took place prior to the filing of the suit by the DH seeking specific performance and Ms. Kamlesh Gupta was not party to the suit. The Objectors subsequently derived their alleged rights from Ms. Kamlesh Gupta.

45. It is also an undisputed fact that the suit for specific performance filed by the DH was based on the Agreement to Sell dated 14.02.1986 executed in her favour, much prior in time to the subsequent Agreement to Sell etc. executed in favour of Ms. Kamlesh Gupta (*Predecessor-in-interest of the Objectors*). The DH ultimately succeeded in that suit, culminating in a decree for specific performance dated 29.04.1998. In our considered view, the equitable



2025-DHC-11771-CB



protection embodied in Section 53A of the TOPA cannot override or defeat the DH's entitlement to seek execution of the sale deed in pursuance of a decree founded on a prior and valid agreement to sell.

46. The DH, having crystallised her rights arising out of the Agreement to Sell executed in her favour by establishing her case before a competent Court, has obtained a valid and binding decree for specific performance. Such a decree cannot be nullified merely on the basis of a subsequent agreement to sell, etc. and possession thereof, as part-performance of the said agreement, raised under Section 53A of the TOPA. It is correct that neither Ms. Kamlesh Gupta nor the Objectors were parties to the said suit; however, the decree for specific performance was lawfully passed against the JD in respect of the Agreement to Sell dated 14.02.1986.

47. Accordingly, we are of the view that the rights accruing from the execution of the sale deed in favour of the DH, pursuant to the Court's decree dated 29.04.1998, shall prevail over any right claimed by Ms. Kamlesh Gupta (*Predecessor-in-interest of the Objectors*) or the Objectors, as the rights of DH emanates from the Agreement to Sell executed by the JD on 14.02.1986. Hence, any subsequent agreement by JD with Kamlesh Gupta will be subservient to the prior right of DH. Since Ms. Kamlesh Gupta herself did not possess an absolute or superior title, she could not have transferred a better title to the Objectors. Accordingly, the doctrine *nemo dat quod non habet* - no one can give what they do not have - squarely applies here.

48. We concur with the findings of the learned Executing Court that the protection contemplated under Section 53A of the TOPA cannot be invoked by Ms. Kamlesh Gupta or the Objectors in the present



proceedings thereby the said provision will not come to the rescue of the Objectors. The DH, who has obtained a valid and binding decree for specific performance based on an earlier Agreement to Sell is entitled to implementation/enforcement of the Court's decree. Consequently, any right, claim, or remedy that Ms. Kamlesh Gupta or the Objectors may seek to assert would lie exclusively against the JD and not against the DH.

49. It is also a matter of record that neither Ms. Kamlesh Gupta nor the Objectors ever approached any Court of law or took any legal recourse available to them to crystallize or assert their rights in respect of the suit property, and the record reflects that the Objectors have filed a suit, only much after the passing of the decree in favour of the DH. Having failed to do so at the appropriate stage, the Objectors cannot now, by invoking equitable considerations under Section 53A of the TOPA, seek to defeat or override the rights of the DH, which have already been duly crystallized by virtue of the decree dated 29.04.1998.

50. Therefore, the Objectors' assertion seeking protection under Section 53A of the TOPA is devoid of merit and stands rejected.

OBJECTORS' ALLEGATIONS OF FRAUD, COLLUSION, AND CANCELLATION OF THE AGREEMENT TO SELL DATED 14.02.1986

51. In their objections, the Objectors have raised two further contentions. First, they allege that the DH and the JD acted in collusion and committed fraud upon Ms. Kamlesh Gupta (*Predecessor-in-interest of the Objectors*), and consequently upon the Objectors themselves. Second, they contend that the Agreement to



Sell dated 14.02.1986, executed by the JD in favour of the DH, stood cancelled prior to the subsequent Agreement to Sell and related documents executed on 21.01.1988 by the JD in favour of Ms. Kamlesh Gupta.

52. The learned Executing Court duly considered and dealt with both these objections in the Impugned Judgment in the following manner:

“Alleged Fraud and Collusion between the Decree Holder and the Judgement Debtor:

58. A plea has been set up by the Objectors that the Judgment and Decree dated 29th April, 1988 is not executable as it has been obtained by fraud and collusion between the decree holder and the judgement debtor with the view to cause prejudice to the interest of Kamlesh Gupta in the property in question, who was having enforceable rights against the property in view of the Agreement to Sell dated 21st January, 1988 having been executed in her favour and she being put in physical possession of the property in question.

59. Though a plea of fraud has been taken on behalf of the applicant, but aside from claiming a fraud and collusion between the decree holder and the judgement debtor, no further facts have been disclosed from where any inference of there being fraud and collusion can be inferred. In fact, the Agreement to Sell dated 14th February, 1986 executed in favour of the DH, Ms. Veena Mahajan was prior to the Agreement to Sell dated 21st January, 1988 executed in favour of Ms. Kamlesh Gupta. No fraud or collusion has been even prima facie disclosed by the applicant in its objections.

60. Moreover, the JD had filed an appeal by way of RFA (OS) 86/1998 challenging the Decree in favour of the DH which was dismissed on merits on 18th January, 2012. The conduct of the JD also does not reflect any collusion with the DH.

Cancellation of earlier Agreement to Sell dated 14th February, 1986:

61. The Objectors have further asserted their right over the suit property by claiming that there is no finding in the judgement that the JD had entered into an Agreement to Sell with Ms. Kamlesh Gupta only after cancellation of the Agreement with the DH in respect of the suit premises. In the absence of any such



2025-DHC-11771-CB



determination of the controversy about the Agreement to Sell in favour of DH having been cancelled by the JD before entering into Agreement to Sell with Ms. Kamlesh Gupta, the Decree of Specific Performance could not have been passed against the JD.

62. This argument is completely fallacious because all the aspects surrounding the Agreement to Sell had been specifically considered while allowing the decree of specific performance in favour of the DH. The aspect of cancellation of the Agreement to Sell in favour of the DH was specifically considered in the judgement dated 29th April, 1998. This aspect of cancellation of the Agreement to Sell in favour of decree holder was also specifically considered in RFA (OS) 86/1998 and the same was negated. Moreover, it is not within the scope of the Objectors to challenge the Decree dated 29th April, 1988 itself, which has already attained finality.”

53. Upon examination of the findings recorded by the learned Executing Court, we find no infirmity or illegality therein.

54. With regard to the allegation of fraud and collusion, the learned Executing Court rightly held that the Agreement to Sell between the JD and the DH was prior in point of time. It was also observed that the JD had continuously contested both the suit for specific performance and the subsequent execution proceedings on merits. Therefore, it cannot be inferred that there was any collusion between the JD and the DH, or that they had committed any fraud upon Ms. Kamlesh Gupta or the Objectors.

55. It is, however, true that despite being fully aware of the Agreement to Sell dated 14.02.1986 and having received consideration pursuant thereto, the JD subsequently executed another set of documents and delivered possession of the suit property to Ms. Kamlesh Gupta (*Predecessor-in-interest of the Objectors*) on 21.01.1988. The JD also failed to disclose these subsequent transactions in the suit proceedings, particularly with respect to the actual possession of the suit property. While such conduct of the JD



may amount to concealment or suppression of material facts from Ms. Kamlesh Gupta and to the Court, it does not, by itself, establish any fraud or collusion between the JD and the DH.

56. At this stage, we also note that Ms. Kamlesh Gupta (*predecessor-in-interest of the Objectors*), as well as the Objectors themselves, derive their rights from the JD. Consequently, they squarely fall within the ambit of the JD's '*representatives*' and are, therefore, covered by Section 47 read with Section 146 of the CPC.

57. Insofar as the alleged cancellation of the Agreement to Sell dated 14.02.1986 is concerned, the learned Executing Court rightly held that this issue had already been adjudicated upon by the competent Court while passing the judgment and decree dated 29.04.1998, and was further examined and affirmed by the Division Bench of this Court in its judgment dated 18.01.2012 in Appeal.

58. The record reflects that this very contention had, in fact, formed the core of the defence set up by the JD in the suit and the subsequent Appeal, opposing the claim for specific performance filed by the DH. Since the said plea was duly considered and found to be devoid of merit by both Courts, it does not warrant any further or detailed re-examination at this stage.

59. In view of the foregoing, the contentions of the Objectors are rejected on these issues.

BONA FIDE PURCHASER FOR VALUE WITHOUT NOTICE

60. The next objection raised by the Objectors before the learned Executing Court was that they were *bona fide* purchasers for value without notice and, therefore, entitled to protection under Section 19(b) of the SRA. This contention was duly examined by the learned



2025:DHJ:11771-CB



Executing Court, which, upon consideration of the material on record, rejected the same. The relevant portion of the Impugned Judgment is reproduced below:

“Bona fide Purchase: Not Aware of the previous Agreement to Sell in favour of DH:

63. The Objectors have set up a defence that they were not aware of the Sale Agreement between the DH and the JD.

Section 19 of the Specific Relief Act, 1963 provides for the relief to the parties claiming under them by subsequent title. It reads as under:

“Section 19:

Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

- (a) either party thereto;
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;
- (d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;
- (e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company: Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.”

64. Lord Buckmaster speaking for a five judge bench in Mt. Fatima Bibi vs. Saadat Ali, AIR (1930) Privy Council while interpreting a parimateria provision of Section 27 (b) of the old Specific Relief Act held that even though the title may be subsequent to the Agreement to Sell of which specific performance is claimed, but if that title was in pursuance to an Agreement of a date earlier to the date of the Agreement of which specific performance was claimed, then the plaintiff is not entitled to the relief of specific performance.

65. In R.K. Mohammed Ubaidullah & Ors. vs. Hajee C. Abdul Wahab (D) Ors. (2000) 6 SCC 402, the Hon’ble Apex Court observed that the person who purchases the property should have made necessary effort to find out whether the title or interest of the



2025-DHC-11771-CB



person from whom he is making purchase of the property was in actual possession of such property. Considering the effect of Section 19 of the Specific Relief Act, 1963, and Section 52 of TPA, 1882, it was held that subsequent purchasers have to be fairly informed before he purchases the suit property.

66. Similar facts as in hand came for consideration in *Guruswamy Nadar vs P. Lakshmi Ammal* (2008)5 SCC 796, wherein the during the pendency of a suit for specific performance, the owner sold the property to another person and the contention of bonafide purchaser was examined. It was held that the defence of bonafide purchase is not applicable during *lis pendens*.

67. This plea of being unaware of the prior Agreement to Sell or of bona fide purchase does not come to the rescue of the Objectors.”

61. Section 3 of the TOPA defines the circumstances under which a person is deemed to have notice, or to be without notice, of a particular fact. The relevant portion of the provision reads as under:

“**“a person is said to have notice”** of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908) and the rules made thereunder,

(2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and



2025-DHC-11771-CB



(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II.—Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material: Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.”

62. Further, to claim the benefit of the exception to Section 19(b) of the SRA, the Objectors were required to affirmatively demonstrate that they exercised due diligence and acted in good faith at the time of acquiring the property. A bare assertion, or a mere self-serving statement, that they are *bona fide* purchasers for value without notice, does not satisfy the statutory requirement. The burden squarely rests on the Objectors to establish, through some cogent material, that they indeed fall within the category of *bona fide* purchasers entitled to protection under the exception to Section 19(b) of the SRA.

63. A Four-Judges Bench of the Hon’ble Supreme Court in ***Gurbaksh Singh v. Nikka Singh***¹², while examining the requirements of analogous requisites, categorically held that such a threshold cannot be satisfied in the absence of evidence. The relevant portion of the judgment reads as under:

“6. The finding given by the learned District Judge that the appellant was a bona fide purchaser in good faith was not based on the evidence in the case but was merely an *ipsi dixit*. Nor did the District Judge consider the impact of the provisions of Section 41 of the Transfer of Property Act on the facts of the case. Such a finding arrived at without evidence and without applying the

¹² 1962 SCC OnLine SC 341



correct principles of law cannot obviously bind the High Court.
Section 41 of the Transfer of Property Act reads:

“Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it : provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.”

7. The general rule is that a person cannot confer a better title than he has. This section is an exception to that rule. Being an exception the onus certainly is on the transferee to show that the transferor was the ostensible owner of the property and that he had, after taking reasonable care to ascertain that the transferor had power to make the transfer, acted in good faith.”

(emphasis supplied)

64. Further, the Hon’ble Supreme Court in ***Duni Chand v. Vikram Singh***¹³, reiterating the same principle in the context of analogous provision, unequivocally held that the requirement cannot be fulfilled without “*specific pleading and evidence by the transferees*”. The relevant extract of the said judgement reads as under:

“22. Further the proviso to Section 41 of the TP Act requires that the transferees to take reasonable care in ascertaining that the transferor had power to make the transfer and that they had acted in good faith. This again would require specific pleading and evidence by the transferees. As already recorded above, even at the cost of repetition, Defendants 2, 4 and 5, the purchasers, from Defendant 1, neither pleaded such facts nor entered the witness box to prove such facts as required under the proviso. The relief granted by the High Court relying upon Section 41 of the TP Act was thus completely unwarranted, misplaced and against the pleading and evidence on record.”

(emphasis supplied)

65. In the present case, the record unmistakably shows that the Objectors have not produced even a shred of evidence to demonstrate that they were *bona fide* purchasers without notice. Despite repeatedly

¹³ (2025) 2 SCC 138



2025-DHC-11771-08



asserting since the passing of the decree that they had no knowledge of the prior agreement or proceedings, they have failed to place on record any categorical assertion supported by material showing the nature, extent, or manner of due diligence allegedly undertaken at the time of the transaction between the Objectors and Ms. Kamlesh Gupta in 1990. As noted earlier, mere assertions cannot confer upon the Objectors the benefit of the exception under Section 19(b) of the SRA. Section 103 of the Indian Evidence Act, 1872, further reinforces this position by mandating that *“the burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person”*.

66. It is further pertinent to note that the suit for specific performance initiated by the DH was instituted in 1988, whereas the Objectors claim to have obtained possession of the suit property only in 1990. The suit culminated in a decree for specific performance in 1998. Despite this clear timeline, the Objectors remained completely inactive for nearly eight years and did not take any step to assert, safeguard, or crystallize their purported rights arising from the alleged part-performance in favour of Ms. Kamlesh Gupta in 1990. It was only after the decree was passed against the JD that the Objectors surfaced, first by filing RFA (OS) No. 125/1998 challenging the decree, and then by moving an impleadment application in RFA (OS) No. 86/1998 (the Appeal preferred by the DH). This casts a further cloud on the Objectors' claim that they are indeed *bona fide* purchasers for value without notice.



67. In view of the foregoing facts and circumstances, when considered cumulatively, it becomes evident that the Objectors have failed to discharge the burden of proving that they were *bona fide* purchasers for value without notice. They have not demonstrated that they exercised even minimal due diligence at the time of taking possession or executing the alleged Agreement to Sell, etc. and possession through Ms. Kamlesh Gupta. Consequently, the Objectors' claim for protection under the exception contained in Section 19(b) of the SRA stands unequivocally rejected.

NO RELIEF OF POSSESSION

68. The final objection raised by the Objectors is that no relief for possession of the suit property was granted in favour of the DH under the decree dated 29.04.1998. Hence, according to them, the said decree cannot be executed, and the DH is not entitled to obtain possession of the suit property in execution proceedings. The learned Executing Court considered and dealt with this contention in the Impugned Judgment in the following manner:

"No Relief of possession is claimed:

68. The Objectors have taken the ground that the decree in the present suit was for the Specific Performance of the Agreement to Sell dated 14th February, 1986 in respect of the suit property in favour of the DH. The fundamental question which has arisen is whether the DH can claim possession when the JD himself was not in physical possession thereof. In addition to this, no relief with respect to delivery of possession was granted even though it was one of the reliefs sought in the Suit. The DH is, therefore, not entitled to seek possession.

69. There has been a divergence of opinion in various judgements as to whether the possession can be delivered while executing a Decree for Specific Performance, when no relief of possession is sought. To obviate the confusion, the Law Commission in its 9th Report submitted on 19th July, 1958 recommended introduction of Section 22 of the Specific Relief Act, 1963 which provided that no



relief in a Suit for Specific Performance may be granted unless it is specifically claimed. Section 22 of the Specific Relief Act, 1963 was thus introduced which reads as under:

“Section 22. Power to grant relief for possession, partition, refund of earnest money, etc.—(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of subsection (1) shall be without prejudice to its powers to award compensation under Section 21.”

70. There is no doubt that no specific relief of possession has been granted despite a prayer being made for the same. This aspect was considered by the Madras High Court in S.S Rajabather vs. N.A. Sayeed AIR 1974 Mad 289, held that if the relief of Specific Performance of a Contract for Sale was granted by a Decree, everything which was necessary for the contract to be specifically performed, can be ordered and informed in the execution.

71. In Gyasa vs. Smt. Risalo AIR 1977 Allahabad 156, Allahabad High court held that it was not always incumbent on the plaintiff to claim possession of partition or separate possession in a suit for specific performance of the contract for the transfer of immovable property. This is to be done where the circumstances so demand. The relief of specific performance of the contract of sale embraces within its ambit not only execution of sale deed but also possession of the property which is the subject matter of the sale deed. Similar observations were made in Narayana Pillai Krishna Pillai vs. Ponnuswami Chettiar Subbalekshmi Ammal AIR 1978 Kerala 236; by the Division Bench of the Calcutta High Court in Debabrata Tarafder vs. Biraj Mohan Bardhan AIR 1983 Calcutta 51, Sm. Dhiraj BalaKaria Vs. Jethia Estate Pvt. Ltd 1982 SCC OnLine Cal 152.



2025-DHC-11771-CB



72. A similar situation, as in hand, was discussed by the Hon'ble Apex Court in Babu Lal vs. Hazari Lal Kishori Lal & Ors. (1982) 1 SCC 525, wherein it was observed that the expression "in an appropriate case" appearing in Sub-Section (1) of Section 22 of the Act implies that a relief of possession has to be sought against the third person as he is not bound by the Contract to be enforced. The Hon'ble Apex Court further observed that the relief of possession can be granted to the Decree Holder where the property is agreed to be conveyed by virtue of an Agreement to Sell. The argument that the plaintiff must claim possession in a Suit for Specific Performance of a Contract in all cases was also negated as Section 22 of the Specific Relief Act, 1963 talks of relief of possession in appropriate cases.

73. Supreme Court in S. Sampooranam Vs. P.V. Kuppuswamy 2007 SCC OnLine Mad 365 reiterated the same principle and held that even in the absence of prayer for possession, once the suit for specific performance is decreed, the court has got every power to order delivery of possession as per the proviso to Section 22 (2) of the specific Relief Act.

74. The Hon'ble Supreme Court in Manickam Thandapani & Anr. vs. Vasantha 2022 Live Law (SC) 395 referred to the aforementioned judgements and emphasized that the phrase "in an appropriate case" stated in Sub-Section 1 of Section 22 of the Specific Relief Act, 1963 does not mandatorily require that possession has to be claimed and granted in every Suit for Specific Performance of Agreement to Sell. It is only where the plaintiff/third party acquires the title to the property alone in the Suit for Specific Performance and his claim for possession/partition is based on independent rights, then in such case, the delivery of possession cannot be granted to the Decree Holder merely on execution of Sale Deed which is in consonance with Section 55(1) of Transfer of Property Act, 1882. However, in cases where the Agreement to Sell itself envisages the handing over of the possession to the Decree Holder, then it may not be necessary for the Decree Holder to have specifically claimed possession over the property as provided in Section 22 (1) of the Specific Relief Act, 1963. It was thus concluded that though Section 22 (2) of the Act, which is in negative language, states that "no relief under clause (a) or clause (b) of Sub-Section (1) shall be granted by the court unless it has been specifically claimed", but the proviso thereto takes out the mandatory nature from the substantive provision and allows the plaintiff to amend the plaint "at any stage of the proceeding". The Hon'ble Apex Court explained that any "stage of proceeding" would include the proceedings in Suit, in appeal and also in execution. The proviso to Section 22(2) makes the provision directory with no penal consequences. Section 22(2) of the Act only contains the rule of



2025-DHC-11771-CB



prudence to ask for possession “in an appropriate case”. It cannot be said that it is a mandatory provision or that the relief of possession cannot be granted in a Decree for Specific Performance in the absence of there being a specific relief so granted.

75. It may be thus concluded that even though the relief for possession had not been granted in the Decree, but it is inherent in the Decree for Specific Performance of the Agreement to Sell. The decree holder is, therefore, entitled to the relief of possession.

76. It is thus concluded that there is no merit in the present application under Section 47 of CPC, 1908 filed by the applicants, Ms. Meera Rani Gupta and Ms. Nalini Gupta and the same is accordingly dismissed.”

69. The learned Executing Court, after citing relevant precedents on this issue, concluded that even though the relief of possession was not expressly granted in the decree, such relief is inherent in a decree for specific performance of an agreement to sell. Accordingly, it held that the DH is entitled to possession of the suit property.

70. While examining an identical question, the Hon’ble Supreme Court in **Birma Devi v. Subhash**¹⁴ held that where a suit has been decreed for specific performance *simpliciter* and no express relief for the transfer of possession of the suit property has been granted, the executing court, by following the necessary procedure, may grant such relief. The relevant portion of the said judgment reads as under:

“12. The short question that falls for our consideration is whether the relief of possession may be granted by the executing court in a case where the suit has been decreed for specific performance simpliciter and no express relief for the transfer of possession of the suit property has been granted.

13. The position of law on the issue has been settled by this Court in the case of **Babu Lal v. Hazari Lal Kishori Lal, (1982) 1 SCC 525** wherein the Court while elaborating on Section 22 of the Specific Relief Act, 1963 laid down the law for the following two situations that may arise:

a. First, in cases where the possession of the suit property is exclusively with the contracting party, then a decree for specific performance simpliciter, without specifically

¹⁴ 2024 SCC OnLine SC 3676



providing for delivery of possession, may give complete relief to the decree holder. This, the Court held, was in consonance with Section 55(1) of the Transfer of Property Act, 1882, which binds the seller, on being so required, to transfer to the buyer or such other person as he directs, such possession of the property as its nature admits.

b. Secondly, in cases where the relief of possession cannot be effectively granted to the decree-holder without specifically claiming relief for possession, for instance, in cases where the property agreed to be conveyed is jointly held by the defendant with other persons, or cases where after the contract the property has passed in possession of a third person, then the plaintiff, in order to obtain complete and effective relief, must claim the relief of transfer of possession over the property defendant along with the relief of partition, etc., if required.

14. For the second category of cases, the Court observed that Section 22, which was introduced by the legislature to avoid multiplicity of proceedings, allows the plaintiff to amend the plaint to include a claim for the relief of possession, partition, etc. at any stage of the proceeding. The Court further held that the expression “any stage of the proceeding” includes the stage of execution of the decree by the executing court. The relevant paragraphs from the said decision are reproduced hereinbelow:

“13. The expression in sub-section (1) of Section 22 “in an appropriate case” is very significant. The plaintiff may ask for the relief of possession or partition or separate possession “in an appropriate case”. As pointed out earlier, in view of Order 2 Rule 2 of the Code of Civil Procedure, some doubt was entertained whether the relief for specific performance and partition and possession could be combined in one suit; one view being that the cause of action for claiming relief for partition and possession could accrue to the plaintiff only after he acquired title to the property on the execution of a sale deed in his favour and since the relief for specific performance of the contract for sale was not based on the same cause of action as the relief for partition and possession, the two reliefs could not be combined in one suit. Similarly, a case may be visualised where after the contract between the plaintiff and the defendant the property passed in possession of a third person. A mere relief for specific performance of the contract of sale may not entitle the plaintiff to obtain possession as against the party in actual possession of the property. As against him, a decree for possession must be specifically claimed or such a person is not bound by the contract sought to be



enforced. In a case where exclusive possession is with the contracting party, a decree for specific performance of the contract of sale simpliciter, without specifically providing for delivery of possession, may give complete relief to the decree-holder. In order to satisfy the decree against him completely he is bound not only to execute the sale deed but also to put the property in possession of the decree-holder. This is in consonance with the provisions of Section 55(1) of the Transfer of Property Act which provides that the seller is bound to give, on being so required, the buyer or such person as he directs, such possession of the property as its nature admits.

14. There may be circumstances in which a relief for possession cannot be effectively granted to the decree-holder without specifically claiming relief for possession viz. where the property agreed to be conveyed is jointly held by the defendant with other persons. In such a case the plaintiff in order to obtain complete and effective relief must claim partition of the property and possession over the share of the defendant. It is in such cases that a relief for possession must be specifically pleaded.

xxx xxx xxx

17. The word “proceeding” is not defined in the Act. Shorter Oxford Dictionary defines it as “carrying on of an action at law, a legal action or process, any act done by authority of a court of law; any step taken in a cause by either party”. The term “proceeding” is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is conducted. The word ‘proceeding’ in Section 22 includes execution proceedings also. In **Rameshwar Nath v. U.P. Union Bank Ltd. [AIR 1956 All 586 : 1956 All LJ 470 : 1956 All WR HC 450]** such a view was taken. It is a term giving the widest freedom to a court of law so that it may do justice to the parties in the case. Execution is a stage in the legal proceedings. It is a step in the judicial process. It marks a stage in litigation. It is a step in the ladder. In the journey of litigation there are various stages. One of them is execution.

xxx xxx xxx

20. It is thus clear that the legislature has given ample power to the court to allow amendment of the plaint at any stage, including the execution proceedings. In the instant



case the High Court granted the relief of possession and the objection raised on behalf of the petitioner is that this was not possible at the execution stage and in any case the court should have allowed first an amendment in the plaint and then an opportunity should have been afforded to the petitioner to file an objection.”

15. The aforesaid position of law has been recently reiterated by us in a recent order passed in the case of **Rohit Kochhar v. Vipul Infrastructure Developers Ltd., 2024 INSC 920** wherein we have observed thus:

“23. This Court in **Babu Lal (supra)**, upon a combined reading of Sections 22 and 28(3) of the Specific Relief Act respectively and Section 55 of the Transfer of Property Act, observed that it was only “in an appropriate case” that the plaintiff was required to separately seek the relief of possession, partition, or separate possession, as the case may be, along with the relief of specific performance. The Court observed that in other cases, say for example a case where the exclusive possession of the suit property is with the contracting party, a decree for specific performance of the contract of sale simpliciter, without specifically providing for delivery of possession, may give complete relief to the decree-holder. This, the Court observed, was the mandate flowing from Section 55 of the Transfer of Property Act.”

16. The Special Leave Petition is, accordingly, dismissed.”

(emphasis supplied)

71. Therefore, in view of the settled legal position discussed hereinabove, it is evident that although the relief of possession was indeed sought in the original suit along with the relief of specific performance, the learned Trial Court, while decreeing the suit for specific performance in favour of the DH, did not pass any express or separate direction concerning delivery of possession of the suit property. The absence of such a specific direction, however, does not imply that the DH was deprived of the right to obtain possession despite having executed the sale of the suit property pursuant to the decree dated 29.04.1998.



72. Furthermore, there is no prohibition, either express or implied, in law restraining the learned Executing Court from granting the relief of possession in a suit for specific performance during the execution proceedings, even where any third person, who falls within the expression 'representation' of the JD, is in possession of the suit property. On the contrary, the judicial precedents discussed above, rendered by the Hon'ble Supreme Court, categorically affirm that the executing court is fully empowered to grant such relief in accordance with law to ensure complete and effective execution of the decree.

73. In light of the above-referred legal principles, the finding recorded by the learned Executing Court is upheld. This is for the reason that, while dealing with the execution of a decree, the learned Executing Court is required to adopt a holistic and purposive approach, drawing its conclusions from the tenor, object and substance of the judgment and decree whose execution is sought, rather than confining itself to an overly literal construction of its terms.

74. In view thereof, and bearing in mind that while the learned Executing Court cannot travel beyond the decree, it is nevertheless duty-bound to ensure its full, effective, and meaningful enforcement, this Court, in exercise of its inherent jurisdiction under Section 151 of the CPC, considers it necessary to issue appropriate directions. Since the DH had expressly sought the relief of possession in the suit, and the omission of such relief in the final judgment appears inadvertent, this Court deems it just and proper, so as to give effect to the rights crystallised under the decree and to prevent it from being rendered illusory, to direct that the relief of possession shall be deemed to have



been granted in favour of the DH, so as to ensure the complete, effective and meaningful execution of the decree.

DECISION:

75. In view of the foregoing discussion, the Impugned Judgment dated 02.02.2023 passed by the learned Executing Court is upheld. However, the finding therein concerning the applicability of the doctrine of *lis pendens* is set aside. Resultantly, the Appeal stands dismissed.

76. It is clarified that the learned Executing Court, while proceeding with the matter of possession, shall do so strictly in accordance with law.

77. The present Appeal, along with pending application(s), if any, stands disposed of in the above terms.

78. No Order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
DECEMBER 23, 2025/sm/kr